



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,396	12/09/2003	Robert W. Kenny	20006.0001US01	4532

7590 11/20/2006

WITHERS & KEYS, LLC
P.O. Box 71355
Marietta, GA 30007-1355

EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
----------	--------------

3751

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/731,396	KENNY ET AL.	
	Examiner	Art Unit	
	Huyen Le	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 10-21, 23-39 and 41-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 10-21, 23-39, 41-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6, 10-14, 17-20, 29-31, 33, 35-39, 41-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Hess et al (4,574,976).

The Sage et al reference discloses a guard system comprising: a first guard panel 11 comprising a flexible material, a padding layer 15 that is disposed between a first sheet and a second sheet, and wherein the first sheet and the second sheet are joined at one edge (located near 52 in Fig. 8) to contain the padding layer 15; a second guard panel 12 comprising a flexible material; and a junction 52 (Fig. 8) between the first guard panel 11 and second guard panel 12 allowing the first guard panel 11 and second guard panel 12 to move relative to one another, wherein the junction 52 comprises a hem.

Although Sage et al does not disclose a flap for covering the drain opening, attention is directed to the Hess et al reference which teaches a flexible drain cover 10 attached over a drain opening 16 by a Velcro strip 11.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a drain cover having a hook and loop fastener

Art Unit: 3751

on the drain opening of the Sage et al liner in view of the teaching of Hess et al for covering the drain opening.

Regarding claims 12, 41, 48 and 50, the first sheet is plastic and the second sheet (top surface of panel 11) is a non-skid material (col. 3, lines 24-26).

Regarding claims 3, 14, 42 and 47, the first sheet and the second sheet are plastic.

Regarding claim 10, the panel includes an adhesive layer attached to the second side of the enclosure for adhering to a surface of a fixture (col. 2, lines 42-44).

Regarding claim 30, the fixture guard system comprises a junction 42 (or 45 or 52) allowing rotation of the first fixture guard panel 11 relative to the second panel 12.

Regarding claim 39, a sheet 16 of the panel can be a non-slip material other than plastic (see col. 2, lines 66-68).

3. Claims 4, 15, 24 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of in view of Hess et al (4,574,976) described above and further in view of Spier (3,133,292).

Although the Sage reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an enclosure of a fixture guard made of woven polyethylene.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sage guard panel in view of the teaching of Spier, wherein doing so would be an obvious design choice.

Art Unit: 3751

4. Claims 16, 21, 23, 25-28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Hess et al (4,574,976) as described above and further in view of Smith et al (3,563,837).

The Sage et al reference discloses a guard panel for a fixture comprising: an enclosure 11 comprising a first side and a second side made of a flexible material 16; and an inner layer having foam padding 15 disposed within the enclosure 11.

Although the Sage et al reference does not teach stitching between the enclosure 11 and the padding 15, attention is directed to the Smith et al reference which teaches stitching 21 between the enclosure 11 and the padding 15 for securing and preventing the padding material in the enclosure from shifting under impact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to providing stitches on the Sage guard panel in view of the teaching of the Smith et al reference for securing and prevent the padding material in the enclosure from shifting under impact.

Response to Arguments

5. Applicant's arguments filed on 09/14/2006 with respect to claims 1-4, 6, 10-21, 23-39, 41-50 have been considered but are moot in view of the new ground(s) of rejection.

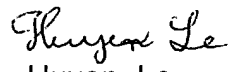
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

Art Unit: 3751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Huyen Le
Primary Examiner
Art Unit 3751

November 14, 2006